

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X	
THE NEW YORK TIMES COMPANY	:	
and CHARLIE SAVAGE,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	<u>COMPLAINT</u>
	:	
OFFICE OF THE DIRECTOR OF NATIONAL	:	
INTELLIGENCE and U.S. DEPARTMENT OF JUSTICE,	:	
	:	
Defendants.	:	
	:	
	X	

Plaintiffs THE NEW YORK TIMES COMPANY and CHARLIE SAVAGE, by their undersigned attorneys, allege for their Complaint:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain an order for the production of agency records from Defendants in response to requests properly made by Plaintiffs.

PARTIES

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, New York.

3. Plaintiff Charlie Savage is a reporter for The New York Times newspaper and an employee of The New York Times Company.

4. Defendant Office of the Director of National Intelligence (“ODNI”) is an agency of the federal government that has possession and control of the records that Plaintiffs seek.

5. Defendant U.S. Department of Justice (“DOJ”) is an agency of the federal government that has possession and control of the records that Plaintiffs seek.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

7. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

8. Plaintiffs have exhausted all administrative remedies available in regard to the requests at issue. Defendant ODNI has failed to respond to Plaintiffs’ administrative appeal of a denial of Plaintiffs’ FOIA request within the time frame set by FOIA, and therefore Plaintiffs are deemed to have exhausted all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C). Defendant DOJ has failed to make an initial determination of Plaintiffs’ FOIA request within the time frame set by FOIA, and therefore Plaintiffs are deemed to have exhausted all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

FACTS

9. On June 13, 2016, Plaintiffs submitted identical FOIA requests to ODNI and DOJ (the “ODNI Request” and the “DOJ Request”).

10. Each request sought “the threat assessments of Guantanamo detainees produced by the six-agency executive order task force appointed in 2009 to review each remaining prisoner and led by Matt Olsen.”

11. ODNI responded to the ODNI Request on June 14, 2016. ODNI said that it would not be able to meet FOIA's statutory deadline for a response and that Plaintiffs could treat the response as a denial.

12. ODNI cited no FOIA exemptions in its response.

13. Plaintiffs appealed the denial from ODNI on June 21, 2016.

14. ODNI, although required by FOIA to decide the appeal within 20 business days, has failed to issue a determination of that appeal.

15. On July 12, 2016, DOJ declared that because of "unusual circumstances" it would not be able to meet FOIA's timetable for issuing a response to the DOJ Request.

16. Under FOIA, an agency's declaration of unusual circumstances can extend the agency's time to provide a response from 20 business days to 30 business days.

17. Nonetheless, DOJ has failed to issue a response to the DOJ Request within 30 business days.

COUNT I AS TO ODNI

18. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

19. Defendant ODNI is subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

20. ODNI has cited no FOIA exemption that applies to the ODNI Request.

21. ODNI has no lawful basis for declining to release the records requested by Plaintiffs under FOIA.

22. ODNI's failure to issue a determination of Plaintiffs' appeal of the denial of Plaintiffs' FOIA request violated FOIA.

23. Accordingly, Plaintiffs are entitled to an order compelling ODNI to produce the documents sought by the ODNI Request.

COUNT II AS TO DOJ

24. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

25. Defendant DOJ is subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

26. DOJ has cited no FOIA exemptions that apply to the DOJ Request.

27. DOJ has no lawful basis for declining to release the records requested by Plaintiffs under FOIA.

28. DOJ's failure to issue a determination in response to the DOJ Request within the time set by law violated FOIA.

29. Accordingly, Plaintiffs are entitled to an order compelling DOJ to produce the documents sought by the DOJ Request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Declare that the documents sought by the ODNI Request and DOJ Request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;
- b. Order ODNI and DOJ to provide the requested documents to Plaintiffs within 20 business days of the Court's order;
- c. Award Plaintiffs the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and
- d. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, NY
August 2, 2016

_____/s/_____
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